During the hearing I questioned the admissibility of the Exhibit P2 as part of the case for the prosecution. This document is the report made by the appellant at the Police Station at about 5.45 p.m. on the 11th November, 1939, about a Chinese whom he had observed to fall down and whom he had then assisted to hospital where he had died. According to this report the appellant had described the event as having happened outside his house. The information which the appellant gave the police was information under section 329 of the Criminal Procedure Code and does not necessarily call for entry in the book kept under section 107 unless of course it also relates to the commission of an offence. It was in this case entered in the book, and *Mr. Grattan-Bellew* submits it was admissible under section 35 (Evidence Enactment, Cap. 10). The point was not argued fully, but I am of the opinion that an entry in a book kept under section 107 of the Criminal Procedure Code is an entry in an official book made by a public servant in the discharge of his official duty. If therefore the entry states a fact in issue or a relevant fact it is itself a relevant fact. Under section 108A a certified copy of the entry may be admitted in a criminal proceeding as evidence of the contents of the original. Such a provision saves bringing the book to the Court. But where the statement in such report is an admission made by a person who is on trial for a crime, and the prosecution desire to prove such admission against him, they ought to call the person to whom such admission is alleged to have been made in order that the defence should have an opportunity to cross-examine him. Such a case very rarely arises for although there are distinctions between admissions and confessions, it will often be found that an admission by an accused on which the prosecution rely amounts to a confession. Is it so in this case?

The prosecution want the report because of the statement with which it opens, viz., "I was seated in front of my house", which is an important admission when it is sought to prove that the appellant had possession of the syringes and the ampoule of morphine at this house. The prosecution were attempting to prove this possession by shewing (a) a direct connection between the appellant and the box P4 and its contents P12-15; and (b) a direct connection between the appellant and the house, viz., that the tenancy was nominal, that the appellant paid the rent, and that the tenant was his kept mistress and regarded as his second wife. Moreover, the prosecution relied upon this admission of proprietorship or occupancy, for not content with putting it in evidence they asked the Magistrate to put questions to the appellant after he had entered upon his defence and had made a statement from the dock. When a Magistrate exercises his discretion under section 256 of the Criminal Procedure Code I think he should record the questions put. That was not done in this case. There can be no doubt that the Magistrate has largely based his conclusion of guilt upon his finding of fact that Muthu was the appellant's mistress. He should not, however, have admitted P2 in evidence for it is an admission of a fact which in this case would tend to prove his guilt. It therefore amounts to a confession and having been made to the police was excluded by section 25 of the Evidence Enactment. *Barindra Kumar Ghose v. Rex*[2]; *Rex v. Raji Sher Mohamed*[3]; *Behari Lal v. Rex*[4].

(The remainder of the judgment deals with the facts, resulting in a finding that there was sufficient evidence to support the conviction).

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

MURRAY-AYNSLEY, J.

June 10, 1940.

PUBLIC PROSECUTOR

vs.

CHIA LIP BOON & ORS.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 62 of 1940]

Excise Enactment (Cap. 133), section 13 (i)—Still, utensil or other apparatus—What constitutes.

The accused, having been found with certain articles which were component parts of a still but which were not capable by themselves of forming a complete still, were charged under section 13 (i) of the Excise Enactment and acquitted.

Held, a part of a still is a utensil and if the purpose for which the part was owned can be proved an offence under the section can be established.

Case referred to:—

(1) *Public Prosecutor v. Manickam* (1940) M.L.J. 133.

CRIMINAL APPEAL.

T. V. A. Brodie, Deputy Public Prosecutor, for appellant.

Respondents in person.

Murray-Aynsley, J.—This is an appeal by the Deputy Public Prosecutor. The respondents were charged under section 13 (i) of the Excise Enactment (Cap. 133).

The facts are shortly that the authorities found certain articles which were alleged to be component parts of a still but which were not capable by themselves of forming a complete still. The Magistrate took the view that it was necessary for the prosecution to prove that such components must be sufficient to form a complete still; to use his own words—

> "In my view a person does not commit an offence under this section for merely having in his possession utensils unless it shall first be proved that such utensils can, either singly or composed together, manufacture some form of liquor. In other words, I consider that it is not enough for the prosecution to prove just possession of utensils, but it must also prove that such utensils must be capable of manufacturing some form of liquor".

The words in the section are "still, utensil or other apparatus for distilling or manufacturing, etc."

If the apparatus had to be complete it would be sufficient to say still.

I think part of a still is a utensil and comes within the terms of the section if its purpose can be proved. If this interpretation is not correct it would be easy to evade the section by keeping a necessary component off the premises.

I have read the recent decision of the Court of Appeal in *Public Prosecutor v. Manickam*[1]. In that case it appears that the component part of a complete still were found but I think that the reasoning would equally apply where some of the components only were found.

The state of affairs is therefore that the Magistrate had evidence that there were utensils which might have formed part of a still, but owing to the view of the law which he took he did not actually find that they were parts of a still.

The defence appears to have been that they once formed part of a still but were now being used for other purposes. If that were true it would I think be a defence.

In the circumstances there must be a new trial before another Magistrate.

The Deputy Public Prosecutor also appealed against the acquittal of the third respondent on the ground that there was some evidence against him. I do not propose to interfere with this part of the decision.

Order in cases of respondents 1 and 2: new trial.

Order in case of respondent 3: appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

MURRAY-AYNSLEY, J.

June 14, 1940.

AR. PL. ARUNASALAM CHETTY

vs.

AZIZ KHAN.

[PERAK CIVIL SUIT No. 210 of 1939]

Contract—Infancy—Promissory note, consideration for—Part given during infancy, part subsequently.

The plaintiff sued on a promissory note the consideration for which was the cancellation of a promissory note in respect of a debt incurred by the defendant during his infancy plus a further advance of $50 made after he had attained his majority.

Held, that subject to relief under the Usurious Loans Enactment (Cap. 63) the further advance was good consideration for the whole amount payable under the promissory note.

F. A. Reid for plaintiff.

B. K. Dass for defendant.

Murray-Aynsley, J.—In this case, an action on a promissory note, no evidence was called on either side. The facts must therefore be taken from the pleadings.

From these it will be seen that the defendant who was born in 1912 received $300 in cash in the year 1929, and executed an I.O.U. for that amount.

In the year 1930 he executed a further I.O.U. for $536 which represented the previous I.O.U. and accrued interest and in the same year a further I.O.U. for interest.

In January, 1937, the defendant executed the promissory note on which he is now sued. This was for $1,000 of which $50 was a fresh advance and the remainder represented indebtedness contracted during infancy.

Now it is clear that contracts by infants are by the Indian Contract Act void which means "not enforceable by law". The defendant was therefore not